

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 22, 2006

In Reply Refer To:
Docket Nos. ER05-6-068
EL04-135-071
EL02-111-088
EL03-212-084

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Attn: J. Cathy Fogel, Esq.
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Dear Ms. Reed and Ms. Fogel:

1. On June 1, 2006, you filed a Settlement Agreement (Settlement) on behalf of Ormet Primary Aluminum Corporation (Ormet) and the Midwest ISO Transmission Owners (Midwest ISO TOs)¹ (collectively, Settling Parties) in the above-referenced

¹ The Midwest Transmission Owners consist of: Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; American Transmission Company LLC; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Shared Services, Inc. f/k/a Cinergy Services, Inc. for Cincinnati Gas & Electric Co. d/b/a Duke Energy Ohio, Inc., PSI Energy, Inc. d/b/a Duke Energy Indiana, Inc., and Union, Light, Heat, and Power Company d/b/a Duke Energy Kentucky, Inc.; E.ON U.S. LLC (for Louisville Gas and Electric Company and Kentucky Utilities Company); Great River Energy; Hoosier Energy Rural Electric Cooperative,
(continued)

dockets. The Settlement fully resolves all of Ormet's obligations to the Midwest ISO TOs as a result of the seams elimination cost adjustment (SECA) charges, including any and all lost revenue claims payable by Ormet to the Midwest ISO TOs. On June 6, 2006, Commission Trial Staff filed comments in support of the Settlement. On June 12, 2006, the Settling Parties filed reply comments for the limited purpose of submitting a draft certification order. On June 28, 2006, the Presiding Administrative Law Judge certified the Settlement to the Commission as an uncontested partial settlement.

2. The Settlement is fair and reasonable and in the public interest and is hereby approved. Under the Settlement, the standard of review for any modifications to the Settlement requested by a Settling Party that are not agreed to by all Settling Parties shall be the "public interest" standard under the *Mobile-Sierra* doctrine. The standard of review for any modifications to the Settlement requested by a non-Settling Party and the Commission will be the most stringent standard permissible under existing law.² The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; Manitoba Hydro; Michigan Electric Transmission Company, LLC; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.

² *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). As a general matter, parties may bind the Commission to a public interest standard of review. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case we find that the public interest standard should apply.

3. This letter order terminates Docket Nos. ER05-6-068, EL04-135-071, EL02-111-088, and EL03-212-084.

By direction of the Commission. Commission Kelly concurring with a separate statement attached.
Commissioner Wellinghoff dissenting in part with a separate statement attached.
Commissioner Moeller not participating.

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER05-6-068

Midwest Independent Transmission
System Operator, Inc.
PJM Interconnection, LLC, *et al.*

EL04-135-071

Midwest Independent Transmission
System Operator, Inc.
PJM Interconnection, LLC, *et al.*

EL02-111-088

Ameren Services Company, *et al.*

EL03-212-084

(Issued November 22, 2006)

KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply “the most stringent standard permissible under applicable law” for any future modifications to the settlement proposed by a non-settling party or the Commission. With respect to such modifications, the order states that the *Mobile-Sierra* “public interest” standard of review should apply. This settlement resolves issues related to the Seams Elimination Cost Adjustment (SECA) monetary obligations between the parties for periods ending March 31, 2006. It is uncontested, does not affect non-settling parties, and resolves the amount of the claimed SECA obligations between the parties for the relevant prior periods. The settlement does not contemplate ongoing performance under the settlement into the future, which would raise the issue of what standard the Commission should apply to review any possible future modifications sought by non-parties or the Commission. Indeed, in a sense, the standard of review is irrelevant here. Therefore, while I do not agree with the order’s statements regarding the applicability of the *Mobile-Sierra* “public interest” standard of review (*see* footnote 2), I concur with the order’s approval of this settlement agreement.

Suedeem G. Kelly

UNITED STATES OF AMERICA
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Ormet Primary Aluminum Corporation
and Midwest ISO Transmission Owners

Docket Nos. ER05-6-068,
ER04-135-071,
EL02-111-088,
and EL03-212-084

(Issued November 22, 2006)

WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,² I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).